

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANITA HELMS)	
Claimant)	
VS.)	
)	Docket No. 162,294
LARNED STATE HOSPITAL)	
Respondent)	
AND)	
)	
STATE SELF INSURANCE FUND)	
Insurance Carrier)	
AND)	
)	
THE KANSAS WORKERS COMPENSATION FUND)	

ORDER

ON the 4th day of November, 1993, the application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge George R. Robertson on October 5, 1993, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by her attorney, Robert L. Peter, of Ellinwood, Kansas. The respondent and insurance carrier appeared by their attorney, Richard L. Friedeman, of Great Bend, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Kent A. Roth, of Great Bend, Kansas. There were no other appearances.

RECORD

The record is herein adopted by the Appeals Board as specifically set forth in the award of the Administrative Law Judge.

STIPULATIONS

The stipulations are herein adopted by the Appeals Board as specifically set forth in the October 1, 1993, award of the Administrative Law Judge.

ISSUES

- (1) Whether or not the claimant met with personal injury by accident that arose out of and in the course of her employment on February 4, 1991.
- (2) Is claimant entitled to additional temporary total disability?
- (3) What is the nature and extent of claimant's disability?

- (4) Is claimant entitled to future medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition to the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

(1) The Workers Compensation Appeals Board on review of any act, finding, award, decision, ruling or modification of findings or awards of the Administrative Law Judge, shall have the authority to grant or refuse compensation, or to increase or to diminish any award of compensation or to remand any matter to the Administrative Law Judge for further proceedings. 1993 Session Laws of Kansas, Chapter 286, Section 53(b)(1).

(2) The Workers Compensation Appeals Board is persuaded, by a preponderance of the credible evidence after reviewing the entire record, that the Award of Administrative Law Judge George R. Robertson of October 5, 1993, is appropriate and affirms the Administrative Law Judge's decision in toto and adopts same as its own.

(3) The respondent and the Kansas Workers Compensation Fund encourage the Appeals Board to reverse the Administrative Law Judge's award of work disability, alleging the respondent's attempts to return claimant to work should eliminate any work disability. The respondent and Fund further attempt to discredit the testimony of both the claimant and the claimant's expert witness, Mr. James Molski.

- (4) K.S.A. 1992 Supp. 44-510e(a) states in part:

"There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

(5) While the respondent and Workers Compensation Fund encourage the Appeals Board to deny this claimant any work disability, the record fails to provide specific evidence from October, 1991, regarding the alleged attempted return of this claimant to substantial gainful employment. The information surrounding the letter of George Welch on October 28, 1991, is incomplete as to whether this claimant was actually offered a position within her physical capabilities at a comparable wage.

(6) The testimony of the claimant regarding her inability to return to her former employment is supported by the testimony of Dr. Brown who fears potential injury to the claimant if she returns to work involving physical confrontation with patients. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

(7) The Administrative Law Judge accurately pointed out the lack of accommodation to the claimant by the State Self Insurance Fund and the inconsistency of the State of Kansas into arguing a lack of work disability while at the same time failing to prove that it attempted to provide appropriate employment to the claimant within her limitations. This inconsistency is clearly detrimental to the State Self Insurance Fund's arguments. The opinions of Dr. Brown, Jim Molski, and the testimony of the claimant, leads this Appeals Board to the conclusion that claimant did indeed suffer a work disability as a result of the personal injury by accident suffered on February 4, 1991.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated October 5, 1993, is affirmed in all respects and an award of compensation is hereby entered in favor of the claimant, Anita Helms, and against the respondent, Larned State Hospital, and the insurance carrier, State Self Insurance Fund and the Kansas Workers Compensation Fund.

The claimant is entitled to 47.88 weeks of temporary total disability at the rate of \$244.03 per week or \$11,684.16 followed by 367.12 weeks at the rate of \$73.21 per week or \$26,876.86 for a 30 percent permanent partial general body disability making a total award of \$38,561.02.

As of October 4, 1993, there would be due and owing to the claimant 47.88 weeks of temporary total compensation at the rate of \$224.03 per week in the sum of \$11,684.16 plus 91.12 weeks permanent partial compensation at \$73.21 per week in the sum of \$6,670.90 for a total due and owing of \$18,355.06 which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$20,205.96 shall be paid at \$73.21 per week for 276 weeks or until further order of the Director.

FURTHER AWARD is made that claimant is entitled to medical expense, and any unauthorized medical expenses if any.

Fees necessary to defray the expenses of the administration of the Workers Compensation Act are hereby assessed against the respondent (to be reimbursed 66 percent by the Kansas Workers Compensation Fund) and such are directed to pay costs of the transcripts as follows:

KELLEY, YORK & ASSOCIATES, LTD.

Deposition of James Molski, Dated April 12, 1993	\$ 305.92
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OWENS, BRAKE & ASSOCIATES

Regular Hearing Transcript, Dated April 6, 1993	\$ 344.42
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UNDERWOOD AND SHANE

Preliminary Hearing Transcript, Dated March 5, 1992	\$ 202.45
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Transcript of Proceedings, Dated April 2, 1992	\$ 80.00
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Deposition of Dr. C. Reiff Brown, Dated March 18, 1993	\$ 469.50
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Deposition of James Forrest, Dated May 10, 1993	\$ 352.00
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Deposition of Joel Jackson, Dated May 10, 1993	\$ 125.95
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Deposition of Robert Cockrell, Dated June 8, 1993	\$ 192.25
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Total	\$1422.15
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IT IS SO ORDERED.

Dated this 14th day of December, 1993.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Robert L. Peter, P.O. Box 176, Ellinwood, Kansas 67526
Richard L. Friedeman, P.O. Drawer 1110, Great Bend, Kansas 67530
Kent A. Roth, P.O. Drawer 338, Great Bend, Kansas 67530
George R. Robertson, Administrative Law Judge
George Gomez, Director